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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,334	12/30/2003	Paul L. Hickman	59147-8002.US02	7600
45965	7590	08/25/2005		
TECHNOLOGY & INTELLECTUAL PROPERTY STRATEGIES (TIPS) GROUPS P. O. BOX 1639 LOS ALTOS, CA 94023-1639				
			EXAMINER RICHMAN, GLENN E	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/751,334

Applicant(s)

HICKMAN, PAUL L.

Examiner

Glenn Richman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8,9 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8,9 and 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 5, 8, 9, 15-18, 19-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyer et al.

Dyer et al disclose an exercise apparatus having a level of effort that is adjustable with an actuator , said exercise apparatus providing a scripted virtual personal training experience for a user of said exercise apparatus, said exercise apparatus including a loudspeaker to provide a vocal warning of an impending change in said level of effort prior to a change in said level of effort by an automated control of said actuator (col. 33, lines 37-54).

As for claims 2, 3, 5, 8, 9, 15, 17 Dyer et al one of a plurality of exercise apparatus each of which is in part time communication with a computer via a network coupling said plurality of exercise apparatus to said computer (fig. 5), said scripted virtual personal training experience includes vocal and actuator control data is stored in a digital storage medium (col. 33, lines 37-54), said automated control of said actuator is in accordance with said actuator control data (col. 33, lines 37-54), a bicycle, a rowing machine, a step machine, a treadmill. and a resistance trainer (fig. 1)

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said exercise experience includes a changing of an operating parameter of said exercise apparatus in relation to said at least one of vocal instruction, comment and encouragement of said virtual personal trainer (col. 4, lines 18-35).

As for claims 18-28, Dyer et al further disclose a frame (fig. 1), a body-engaging member (fig. 1), an actuator coupled between said frame and said body-engaging member (fig. 1), a visual display (166), and an audio display providing at least one of vocal instruction, comment and encouragement of a virtual personal trainer (col. 4, lines 18-35), an actuator controller coupled to said actuator (fig. 6), display images that are synchronized with said at least one of vocal instruction, comment and encouragement of said virtual personal trainer (col. 4, lines 18-35), said actuator controller is synchronized with at least one of said visual display and said audio display (col. 4, lines 18-35), control signals for at least one of said visual display, said audio display, and said actuator controller are at least temporarily digitally stored (fig. 9), control signals for a least one of said audio, display and said actuator are at least temporarily digitally stored (fig. 8), control signals are stored in a volatile digital storage medium (abstract), a non-volatile digital storage medium (abstract), a rotary disk (col. 23, lines 12-26), loudspeaker (210).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Marci.

Dyer does not disclose an internet link.

Marci discloses an internet link (col. 3, lines 17-30).

It would have been obvious to use Marci's internet link, with Dyer, as it is well known in the art to use an internet link to communicate exercise data over.

As to the applicant's arguments:

1. Dyer does not script the exercise session.
2. Dyer does not automatically change the exercise after providing a vocal warning.

As to 1 and 2 above, the applicant is directed to col. 33, lines 37-54, where Dyer disclose a script for an exercise session and providing a vocal warning of an impending change to the exercise routine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 703 308-3170. The examiner can normally be reached on Mon-Thurs.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn Richman  
Primary Examiner  
Art Unit 3764